THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 11091 of 2006

DATED: 19-06-2006

BETWEEN:

Tahir N.Khambati and others

.. Petitioners

And

Secunderabad Cantonment Board

.. Respondent

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 11091 of 2006

ORAL ORDER:

The petitioners, inter alia, assail the communication/order of the respondent dated 03.06.2004 which reads as follows:

> *"In this connection, this is to inform you, that your above referred application has been forwarded to Mandal Revenue Officer, Secunderabad Mandal for their no-objection from land point of view. The Mandal Revenue Officer raised definite objection against the processing the subject layout in respect of R. Sy. No.75/2, Rasoolpura vide their letter No.B2/1230/2001, dated 10.06.2003 stating that an appeal has been filed before Revenue Divisional Officer, Secunderabad division u/s 5 of R.O.R Act by Shri Gopisetty Prabhakar Rao s/o Shri L.G.Shankaraiah for Sy.No.75/2, Rasoolpura Village" and requested not to grant any permission to the subject layout till the appeal is disposed off.*
>
> *You were also informed the above objection of MRO, Secunderabad vide this office letter No.EN/Sy.No.75/2, Rasoolpura/3040, dated 25.06.2003. You are therefore, requested to submit No-objection certificate from MRO, Secunderabad.*
>
> *One copy of the plan is being retained in our office for our records."*

According to the petitioners, they purchased an extent of 3130 square yards (0.30 guntas) in Survey No.75/2 at Rasoolpura Village, Secunderabad under a registered sale deed dated

18.05.1998 and were in possession and enjoyment of the lands since then. Some of the vendors of the petitioners purchased the property along with the other vendors from One Gopisetti Shankaraiah under a registered Sale Deed, dated 14.08.1957 and thereafter, sold the property to the petitioners in 1998 as aforesaid. The mutation has also taken place in the revenue records in the names of the vendors of the petitioners. The petitioners are desirous of obtaining a layout for the said land and applied for the same on 29.03.2003 to the respondent under the Secunderabad Cantonment (Laying of Streets and Regulation and Prohibition of Erection of Building) Byelaws, 1974, after furnishing a copy of the sale deed in support of their claim of title to the property.

The petitioners assert that as per the Clause 15 of the Byelaws the respondent is empowered to sanction the layout plan, if the same is in accordance with the Byelaws or to sanction the same with such modifications as the Board may consider or may also refuse to sanction any layout if proprietary rights on the land proposed to be laid down are claimed by the Government of India in the Ministry of defence on the basis that the land is shown in the general land register maintained for that purpose.

The petitioners state that after receiving their application from the petitioners for sanction of a layout, the respondent referred the same to the Mandal Revenue Officer, Secunderabad Mandal for his no objection certificate. This reference was wholly unnecessary and beyond the jurisdiction of the respondent. Thereupon, the respondent addressed a letter on 03.06.2004 to the

petitioners (extracted above) wherein is set out the Mandal Revenue Officer's recorded objections against sanction of a layout to the petitioners on the ground that an appeal had been filed before the Revenue Divisional Officer, Secunderabad by Gopishetty Rajeshwar s/o Shankaraiah under Section 5 of the Record of Rights Act in respect of the same property. The letter of the respondent dated 03.06.2004 also records the request/direction of the Mandal Revenue Officer to the respondent not to grant any permission till the disposal of the appeal. The letter ends with a direction to the petitioners to submit a no objection certificate from the Mandal Revenue Officer, Secunderabad. In these circumstances, the writ petition came to be filed.

The respondent has filed a counter affidavit dated 17.06.2006, admitting the submission of an application by the petitioners for sanction of a layout. The respondent has a limited and defined jurisdiction, under byelaw No.15, limited to verifying and dealing with any objection of the Government of India, Ministry of Defence claiming proprietary rights in the land for which a layout sanction is sought.

The respondent states that the Director, Defence Estates, Pune by proceeding dated 16.01.2003 had issued instructions for sanction of building plans on open plots and that instruction No.5(f) therein is to the effect that the sanction of construction on a plot which is a part of agricultural land cannot be accorded by the Board without the prior approval of the State Revenue authorities. In view of the said instructions, the Cantonment Board has been

requesting the persons concerned to obtain a no objection certificate from the Mandal Revenue Officer concerned for releasing the layout plans to avoid future litigation, is the assertion in the counter affidavit.

The counter affidavit further states that in recent times, the respondent has experienced instances where private persons submit layout applications including in respect of lands of the Government of Andhra Pradesh. To avoid litigation on Government lands and with an intention to protect the Government lands, the respondent used to refer the layout applications to the concerned M.R.Os. for getting detailed information and his N.O.C. In the said process, the application of the petitioner was also forwarded to the M.R.O., Secunderabad who in turn raised an objection referring to a dispute between the vendor of the petitioner and G.Rajeshwar and the pendency of an appeal before the R.D.O. In case the layout is sanctioned to the petitioner, the plots will be sold to the third parties who will be put to serious hardship and trouble in case the litigation goes against the vendor of the petitioner. To protect the interest of the third parties from future litigations, the application for layout has been returned till finalization of the appeal, is the case of the respondent.

From the assertions in the counter affidavit extracted above it is apparent that the respondent has arrogated to itself a jurisdiction not conferred by any law, with a view to safe guard the lands of the State Government and to avoid potential hardship to innocent purchasers of property. The respondent is a statutory authority of limited jurisdiction entitled to consider and determine,

either by exercise of executive or quasi-judicial authority matters entrusted to him within a limited and defined spectrum. No expansion of the respondent's jurisdiction is discernable on the basis of a letter written by the Director, Defence Estates. Letters by the Director, Defence Estates do not constitute legitimate instruments for conferral of jurisdiction, which is not available in a statutory instrument.

It is neither pleaded, urged or established that the letter of the Director, Defence Estates dated 16.01.2003 constitutes an amendment to the Byelaws, enhancing or extending the jurisdiction of the respondent. If the respondent appropriates jurisdiction that does not inhere in him under the byelaws and on the basis of a letter of the Director, Defence Estates, it is the respondent as a statutory authority that has to answer for the indiscretion of relying on the letters of the Defence Estate Officer for transgressing the limits of his jurisdiction. An authority is obligated to define the spectrum of his statutory powers under the instrument conferring powers and must disregard letters written by the superior officers which do not have the status of instruments conferring or extending statutory jurisdiction. It is a normal incident of a public office and higher public office, that the decisions should be arrived at uninfluenced by non-statutory communications even by superior officers. No instrument except the letter of the Defence Estates Officer referred to above is placed before this Court. No legal authority is shown for the respondent's conduct in addressing the Mandal Revenue Officer, getting a response from the said revenue official or for calling upon the petitioner to submit a no objection

certificate from the revenue officials of the State.

The assumption of the respondent that the protection of lands of the State Government is his burden is an assumption which has no basis in law and is misconceived.

For the aforesaid reasons, the writ petition is allowed with costs. The respondent is directed to consider the application of the petitioners for sanction of a layout without insisting that the petitioners obtain a no objection certificate from the Mandal Revenue Officer, Secunderabad. As the respondent has without due application of mind to the limitations of his authority has called upon the petitioners to get a no objection certificate from an authority unconcerned with the exercise of power by the respondent, the respondent shall pay costs to the petitioners in an amount of Rs.2500/- within a period of 4 weeks from the date of receipt of a copy of this order.

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GODA RAGHURAM,J

Dated:19-06-2006

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